

passing this legislation and changing current law, we can change hearts and minds as well.

COLLOQUY ON CAMCORDER PROVISION OF S. 1932

Mr. HATCH. Mr. President, Section 3 of the ART Act establishes a new provision of Title 18 entitled, "Unauthorized Recording of Motion Pictures in a Motion Picture Exhibition Facility." I ask Senator CORNYN, what is the purpose of this provision?

Mr. CORNYN. Section 3 addresses a serious piracy issue facing the movie business: the use of camcorders in a motion picture theater. Sad to say, there are people who go to the movie theater, generally during pre-opening "screenings" or during the first weekend of theatrical release, and using sophisticated digital equipment, record the movie. They're not trying to save \$8.00 so they can see the movie again. Instead, they sell the camcorder version to a local production factory or to an overseas producer, where it is converted into DVDs or similar products and sold on the street for a few dollars per copy. This misuse of camcorders is a significant factor in the estimated \$3.5 billion per year of losses the movie industry suffers because of hard goods piracy. Even worse, these camcorder versions are posted on the Internet through "P2P" networks such as KaZaa, Grockster and Morpheus—and made available for millions to download. The goal of our bill is to provide a potent weapon in the arsenal of prosecutors to stem the piracy of commercially valuable motion pictures at its source.

Mr. HATCH. I have heard it said that this bill could be used against a salesperson or a customer at stores such as Best Buy or Circuit City if he or she were to point a video camera at a television screen showing a movie. Is this cause for concern?

Mr. CORNYN. Absolutely not. The offense is only applicable to transmitting or copying a movie in a motion picture exhibition facility, which has to be a movie theater or similar venue "that is being used primarily for the exhibition of a copyrighted motion picture." In the example of Best Buy—the store is being used primarily to sell electronic equipment, not to exhibit motion pictures. For the same reason, the statute would not cover a university student who records a short segment of a film being shown in film class, as the venue is being used primarily as a classroom, and not as a movie theater.

Mr. HATCH. Does the Senator from California agree with our colleague from Texas?

Mrs. FEINSTEIN. Absolutely, on all points.

Mr. HATCH. I have also heard some say that this statute could be used to prosecute someone for camcording a DVD at his home. Is this a fair concern?

Mrs. FEINSTEIN. No, it is not. The definition of a motion picture exhibi-

tion facility includes the concept that the exhibition has to be "open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances." This definition makes clear that someone recording from a television in his home does not meet that definition. It is important to emphasize that the clause "open to the public" applies specifically to the exhibition, not to the facility. An exhibition in a place open to the public that is itself not made to the public is not the subject of this bill. Thus, for example, a university film lab may be "open to the public." However, a student who is watching a film in that lab for his or her own study or research would not be engaging in an exhibition that is "open to the public." Thus, if that student copied an excerpt from such an exhibition, he or she would not be subject to liability under the bill.

Mr. HATCH. Do the users of hearing aids, cell phones or similar devices have anything to fear from this statute?

Mrs. FEINSTEIN. Of course not. The statute covers only a person who "knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under Title 17, or any part thereof. . . ." In other words, the defendant would have to be making, or attempting to make, a copy that is itself an audiovisual work, or make, or attempt to make, a transmission embodying an audiovisual work, as that term is defined in Section 101 of Title 17. As such, the Act would not reach the conduct of a person who uses a hearing aid, a still camera, or a picture phone to capture an image or mere sound from the movie.

Mr. HATCH. It appears that there is no fair use exception to this provision. Is that correct?

Mrs. FEINSTEIN. This is a criminal provision under Title 18, not a copyright provision under Title 17. Accordingly, there is no fair use exception included. However, Federal prosecutors should use their discretion not to bring criminal prosecutions against activities within movie theaters that would constitute fair use under the copyright laws. The object of this legislation is to prevent the copying and distribution of motion pictures in a manner that causes serious commercial harm. This legislation is not intended to chill legitimate free speech.

Mr. HATCH. Does the Senator from Texas agree?

Mr. CORNYN. Yes, on all points.

BOYS AND GIRLS CLUBS OF AMERICA

Mr. FEINGOLD. Mr. President, I wish to express my strong support for S. 2363 and the Boys and Girls Clubs of America. For over a hundred years, the Boys and Girls Clubs of America have been empowering the youth of our Nation by

giving them tools to help them become productive citizens and future leaders. Providing children a safe place to learn and grow is just the beginning for this wonderful organization, which supports and inspires its members to participate in community service, arts, and culture, and sports and fitness activities, to learn important health and life skills, and much more.

I am especially proud of the vibrant 115-year history of the Boys and Girls Clubs of Milwaukee, whose five clubs currently serve more than 22,000 Milwaukee-area members. The Milwaukee clubs have won national awards for their technology and dental programs, and have achieved tremendous success in inspiring their members to strive to attend college. An impressive 85 percent of Milwaukee Club alumni credit Club staff for helping them learn leadership skills and build self-confidence. I am pleased that the legislation passed by the Judiciary Committee and the full Senate will help the Milwaukee-area clubs continue their important work.

I strongly support this bill, and I express my gratitude to Judiciary Committee Chairman HATCH and Ranking Minority Member LEAHY for giving this important cause the attention it deserves. The Boys and Girls Clubs of America are integral in fostering a safe and productive environment for our Nation's young people, our country's greatest resource for the future.

ADDITIONAL STATEMENTS

TRIBUTE TO JAMES A. ZIMBLE, M.D.

• Mr. INOUE. Mr. President, today I pay tribute to James A. Zimble, President of the Uniformed Services University of the Health Sciences, USUHS. On August 3, 2004, this remarkable individual will mark the end of his 46-year career in Federal service.

Dr. Zimble, Vice Admiral, Medical Corps, United States Navy (Retired), and 30th Surgeon General of the United States Navy, was born on October 12, 1933, in Philadelphia, PA. He served as a senior medical student and ensign in the Navy Reserve Program from 1958 through 1959, earning a Medical Degree from the University of Pennsylvania, School of Medicine (SOM). Thus commenced a career dedicated to service to his nation, medical readiness, and force health protection.

Dr. Zimble's 33-year career in the Navy began with his internship and residency at the Naval Hospital in St. Albans, New York. By 1969, he was board certified by the American Board of Obstetrics and Gynecology. From 1972 through 1987 he served with distinction in a series of assignments directing clinical services and strategic planning. His Navy career culminated with his selection to serve as Surgeon General of the Navy, from 1987 through 1991. Vice Admiral Zimble earned multiple honors and awards during his